S. Bij. 10/53

K 1953.

File No.

Legal DEPARTMENT

E. BRANCH

Examined)

Subject:— Suits. Bijapur

C. S. No. 41 of 1953.

1) Madhav Pandurang Ankalikar
2) Sangappa Shankarappa Heralgi } ....Plffs

V/S

The State of Bombay ..... Deft.

Re: For a declaration that the plff's liability under the surety bonds executed by them for the due discharge of duties by shri Shiknis, Godown ~~Mang~~ Manager, Bijapur, is discharged, etc.

HSE

File No. S. Bij. 10/53

Std. Scott. Slip 24-B

10/53

Draft report under No. Rule 118 of the Law Officers Rules.

====

(I)	Number of the Suit.	41/1953.
II	The date on which and the Court in which it was instituted.	On 11-2-1953. In the Court of the Civil Judge, Senior Dn.,Bijapur.
III	Names of all parties.	1. Shri.Madhav Pandurang Anklikar,Bijapur. 2. Shri.Sangappa Shankreppa Heralgi (both of Bijapur). Vs. 1. The State of Bombay.
IV.	The amount or value of claim.	Rs. 5/-
V.	The date fixed by the Court for the first - hearing.	On 27-2-1953 for putting objection to temporary injunction.
	Whether notice of action has been given under - Section 80 C.P.C.and - if so, the date of - delivery of such notice.	Yes. On 8-12-1952.

2. (a) The Plaint in original is at page 55 to 65 File-I.

(b) The translation of all important documents has been made in English and enclosed in each file. The following are the important documents.

(1) Copy of the order of appointment of Shri.D.K.Shiknis, as Godown Manager/Bijapur (Page 1 to File-I).

(2) Copy of the Security Bond dated 6-1-1950 executed by Shri.D.K. Shiknis for Rs. 2,000/- before Mamlatdar of Bijapur (page 1 of file-II).

(3) Copy of Security bond dated 4-4-1950 executed by Shri.D.K.Shiknis, before the District Supply Officer,Bijapur (page-5 of File-II).

(4) Copy of the statement of Shri.L.A.Savanur. the then District - Supply Officer,Bijapur, before the Dist.Magistrate,Bijapur, on 2-2-1953 regarding the discrepancy in bond (page 9 of File-II).

(5) Copy of the "Panchanama" dated 4-11-1952 drawn by the Personal - Assistant to the Collector of Bijapur at the time of verification of cash balance at Bijapur Godown (Page 5 of File-I).

(6) Copy of report No.699 dated 25-11-1952 from the Divisional Inspector of Supply Accounts, Dharwar Dn.,Dharwar, regarding the misappropriation of Rs. 9,754-8-7 together with copies of the accompaniments (pages 9 to 25 File-I).

(7) Notice of demand dated 9-12-1952 duly served on the - Principal Shri.Shiknis, together with his reply (pages 27 to 30 File-I).

(8) Notice of demand dated 11-12-1952 duly served on the - Plaintiff sureties (pages 31 to 34 File-I).

(9) Notice under Section 80 C.P.C.dated 8-12-1952 given by the Plaintiff sureties (pages 35 to 44 File-I).

(0) Statement of facts dated 10-1-1953 (pages 45 to 47 of File-I).

(11) Opinion of the Dist.Govt.Pleader dated 20-1-1953 (page 51 of File-I).

(12) Instructions issued to the Mamlatdar of Bijapur under No. SUP/ADM.SR-77 of 16-1-1953 to issue sale notice mentioning Rs. 6000/- (page 53 of File-I).

(c) (i) The circumstances which led to the suit.

The plaintiff sureties stood as sureties to Shri.D.K.Shiknis, Godown Manager,Bijapur, and executed a bond under Rule 40 of Financial Rules under Rule Rule-37(e) of the Devolution Rules for Rs.6000/- on 4-4-1950 before the District Supply Officer, Bijapur, and bond themselves to forfeit to Government a sum of Rs. 6000/- in the event of neglect, default etc., on the - part of the said Shri.Shiknis, They further bound themselves - that the amount of the bond may be recovered as an arrear of - Land Revenue.

2. On a surprise visit by the P.A. to the Collector to the Godown Office, at Bijapur, and verifying the cash balance in the presence of " Panchas" on 4-11-1952 a defalcation of - Rs. 9,754-8-7 was noticed. Since the Godown Manager- Shri.D.K. Shiknis, was responsible for the cash and failed to pay it, the Sureties Shriyuts. M.P.Anklikar and S.S.Heralgi were

S

Heralgi were proceeded against to the extent of their liability i.e. Rs.6000/- by the Mamlatdar of Bijapur to whom orders were issued by the Collector.

3. Being aggrieved by the action of the Mamlatdar of - Bijapur, the sureties have filed a suit against Government in the Court of the Civil Judge, Senior Dn., Bijapur.

(ii) The course which it is proposed to adopt namely whether to - admit compromise or defend the suit and the reasons for the same.	To defend.
(iii) If it is proposed to defend the suit the grounds on which it is proposed to base the - defence and of the - - evidence to be adduced.	It is proposed to defend the suit on the basis of the documents referred to in point No.2(b) and the statement of facts.
(d) If the case turns on documentary evidence, copies of the documents relied on by the - - Plaintiff and by the defence.	No documents are produced by the Plaintiff. The documents relied on to defend the suit are - detailed in answer to point No.2(b) above.

(e) All the papers of the case are enclosed in (2) Files. Important papers have been translated into English and the translations are enclosed in each file.

(f) Statements of documents containing brief descriptions of all the documents- referred to in columns (d) and (e).

(1) The security bond of Rs.6000/- dated 4-4-1950 states that the - amount can be realised from the Plaintiff sureties as an arrear of L.R.in case of default etc. on the part of the Principal i.e. Shri.D.K. Shriknis, the then Godown Manager,Bijapur (Page-9 File-II).

(2) The " Panchanama" and the audit report of the Divisional Inspector of Supply Accounts Dharwar (page 9 of File-I) go to show that there was a defalcation of Rs. 9,754-8-7 on the part of Shri.D.K.Shiknis, the then Godown Manager,Bijapur.

(3) Demand notice was issued to the Principal to make good the loss caused by him (page 27 of File-I). Since, he failed to make good the loss notice of - demand were issued to the sureties (page 31 to 34).

(4) As the both the Sureties failed to discharge their liability under the Bond, the sale of their lands were held under the provisions of L.R.C.

o.c.signed
by the D.M.

Bijapur,
7-3-1953.

For District Magistrate,Bijapur.

Bijapur C.S.No.41 of 1953.

This is a suit filed by Shri Madhav Pandurang Anklikar and another against the State of Bombay for a declaration [(1)] that their liability under the surety bonds executed by them for the due discharge of duties by Shri Shiknis, godown manager, Bijapur is discharged; (2) the revenue officers of the State of Bombay are not entitled to take steps for recovery of the amount of bonds as an arrear of land revenue; (3) for injunction restraining the defts. from realising the amount and (4) for costs. The suit is defensible and sanction for its defence may be accorded on the lines of the appended brief.

25/6

Received in C. S. D. E.
on 26/6.

Sol. (M) agreed
26/6

With GKH book
ABC Manuel
Loose pp
& one file SUPADM SR 77

Secy C.S.D. 27/6/53

DECH. 2091

13728/E
26.6.53.

No. 954 of 1953.

16th July 1953.

To

The Remembrancer of Legal Affairs,
Secretariat, Bombay.

Subject: Bijapur Civil Suit No. 41 of 1953.

Sir,

I have sent herewith a draft of the Written-statement to the suit and a draft of the objection in respect of the application for temporary injunction. I have also sent herewith two files sent to me under your memorandum No.14184 of 2-7-1953. The written-statement and objections as ~~raised~~ revised by you, and the two files may please be returned to me. The date for putting in written statemer and objections is 10-8-1953.

2. Shri Siknis was first ordered to give a security bond for an amount of Rs.2000/-. He passed the bond with plaintiffs as his sureties.

In modification of the above order he was ordere to pass a bond of Rs.5000/-.(Both these orders are not in the papers in the two files. They are to be found in the papers in the Supply Office, Bijapur).

Later it appears that the Collector expressed that the bond should be for Rs.6000/-.(Please vide statement of Shri Savanoor at page 9 of file No.II). Thus the bond for Rs.6000/- was passed. It was in view of these facts that the Collector ultimately restricted the recovery proceedings to Rs.6000/-.(Please vide page 53 of file No.I. and my opinion at page 51 of file No. I).

3. In view of what is stated in para 2 above I am of opinion that the bond of Rs.6000/- was passed in modification of, and not in addition to, the bond of Rs.2000/-. It is in the light of this view that I have prepared the draft of the written-statment to the suit sent herewith to you.

4. In para 5 of the written-statement to the suit, I have referred to an anonymous letter dated 3-11-1952 and the application of Shri Jiknis dated 28-10-1952 given in person to the Collector on 4-11-1952. These two papers are not in the papers of the two files sent herewith to you. They are with the Bijapur Police to whom the Collector had sent the papers for investigation.

5. In view of the facts stated above by me I am forwarding this report along with the draft of the written-statement to the suit, and draft of objections to the application for the temporary injunction, and the two files through the Collector of Bijapur so that the Collector of Bijapur may forward the same to you with his own remarks.

Yours faithfully,

Government Pleader, Bijapur.

Forwarded with compliments with all the papers above referred to through the Collector.

Government Pleader, Bijapur.

L. D

Submitted.

2. The draft Written Statement in C.S. No. 41 of 1953 forwarded by the D.G.P. Bijapur and the draft of the objections to the applcn. for temporary injunction are in order and may be approved.

27.7.53

Sol. (M.S.)
27-7-53

IN THE COURT OF THE CIVIL JUDGE,SENIOR DIVISION,

AT BIJAPUR.

CIVIL SUIT NO. 41 of 1953.

1. Madhav Pandurang Anklikar.
2. Sangappa Shankareppa Heralgi. .... Plaintiffs.

Vs.

1. The State of Bombay. .... Defendant.

Herein the defendant by his Written-statement states as follows:-

1. This defendant denies the claim of the plaintiffs.

2. The plaintiffs are not entitled to any of the reliefs prayed for by them.

3. Shri D.K.Siknis was appointed as Godown Manager First Grade, Bijapur, on 15-12-1949. He served in that capacity till and on 4-11-1952. He executed a security bond on 6-1-1950 for an amount of Rs.2000/- with plaintiffs as his sureties. In accordance with the conditions of his service and having regard to the cash etc.handled by Shri Siknis he was required by the Collector and District Magistrate Bijapur, to execute ~~the~~ security bond for Rs.6000/-. Accordingly Shri Siknis executed a security bond for Rs.6000/- in the form prescribed under the - Financial Rules on 4-4-1950 for this purpose, of securing and indemnifying the Government against all loss, damages etc.which Government may in any way suffer by reason of misconduct, neglect, oversight or any other act of Shri Siknis or of any person acting under him or for whom he may be responsible. The plaintiffs declared themselves to be sureties for Shri Siknis that he shall do and perform all that he undertook to do and perform in terms of the said bond, and in case of default, the plaintiffs bound themselves jointly and separately to forfeit to Government

Rs.6000/- or such lesser sum as shall be deemed to be sufficient by the Collector to cover any loss or demage which Government may sustain by reason of such default. They also agreed thereby that the said amount may be recovered from them as arrear of land revenue. The plaintiffs accordingly executed and signed the surety bond.

4. The allegations in para 1 of the plaint that Shri Siknis was asked to furnish a bond for Rs.3000/- and by oversight he passed a bond for Rs.6000/- are not correct and are denied. Shri Siknis was required to furnish security bond of Rs.6000/- with two sureties and accordingly he and his two sureties namely the plaintiffs executed the surety bond for an amount of Rs.6000/- as stated in para 3 above. The amount of Rs.3000/- in one of the paras of the surety bond dated 4-4-1950 is a clerical mistake for Rs.6000/-.

5. On 3-11-1952, the Collector received an anonymous letter stating inter-aliea that there was a short balance about Rs.8000/- to 9000/- and that the Godown Manager is in the habit of using the cash balance. The Collector sent the letter to his Personal Assistant with an endorsement to him to verify the balance. on 4-11-1952, the Personal Assistant to the Collector visited the Godown and checked the cash balance. It was thereupon noticed that the Godown Manager Shri Siknis had misappropriated Rs.9754-8-7. Shri Siknis is being prosecuted for misappropriation of that amount. The Divisional Inspector of Supply Accounts, Dharwar Division held a detailed inquiry and confirmed misappropriation of the said amount by Shri Siknis. The contention of the plaintiffs to the effect that the investigation and inquiry are not completed is not correct. The Government deputed Divisional Inspector of Supply Accounts Poona Division, to make a special Audit of the accounts of

15 1

the Godown. That Audit is for a different purpose and does not affect in any way the detailed enquiry already made by the Divisional Inspector Dharwar Division. It was not necessary to await the result of any further audit or of the prosecution of Shri Siknis. On 4-11-1952 Shri Siknis gave in person an application to the Collector dated 28-10-1952. The allegations therein are not admitted by tne defendant. The allegations and contentions for the plaintiffs in para 2 of the plaint which are inconsistant or contrary to what is stated in this para are not correct and are denied.

6. Shri Siknis was called upon to make over the amount of Rs.9754-8-7 but he did not do so. The plaintiffs being sureties are responsible to the extent of their liability ~~proceeded against~~ and their property is being proceeded against for the recovery of Rs.6000/- as an arrear of land revenue in terms of the security bond of Rs.6000/- passed by them.

7. The demands for Rs.9755-0-3 as stated by the plaintiffs in para 3 of the plaint if any were modified in view of their surety bond for Rs.6000/-. The demand for Rs.6000/- and steps for the recovery of the same as arrear of land revenue by proceeding against the property of the plaintiffs are thus legal and proper. The contention of the plaintiffs in ~~the~~ the plaint that they are illegal, premature and in excess of the liability undertaken by the plaintiffs is not correct.

8. The allegations in para 5, para 5(a)to(d), para 6 and the allegation in para 7 to the effect "The Mamlatdar's action in issuing.....setforth in the paragraph heretobefore" and the allegations in para 8 are not correct and are denied. The allegation in para 9 of the plaint to the effect that the acts and conduct of the defendant's agents are illegal is not correct and is denied.

9. The liability of the plaintiffs ~~in para 5 of~~

has not been discharged as contended by the plaintiffs in para 5 of the plaint.

10. There were no continuous defalcations since 1950 and the allegations to the contrary in para 5(a) of the plaint that defalcations were made possible and were facilitated by the conduct etc. of the superior and other officers are not true.

11. The Officers referred to in para 5(a) of the plaint exercised proper check over the Godown and its account as required by the Departmental requirements.

12. The conditions of service of Shri Siknis were the same as those when the plaintiffs executed the security bonds as sureties.

13. The defendant has done no act which is inconsistent with the rights of the plaintiffs. The defendant has not omitted to do anything which has resulted in ~~repairing~~ destroying the plaintiffs remedies against Shri Siknis.

14. No material evidence was withheld the defendant from the plaintiffs. Neither the defendant nor its officers kept silent about anything in their knowledge. The defendant came to know of the misappropriation of the amount in question by the checking of the cash balance by the Personal Assistant to the Collector on 4-11-1952 and on the detailed inquiry conducted by the Divisional Inspector of Supply Account Dharwar Division.

15. The liability of the plaintiffs is not discharged under sections 133,134,139 and 143 or under any other provisions of the Indian Contract Act. The liability of the plaintiffs under the surety bond of 4-4-1950 still continues.

16. Snri Siknis was appointed as a

17

Godown Manager First Grade. Shri Siknis first executed a security bond on 6-1-1950 and in view of the Rules, that amount was obviously considered inadequate by the Collector and the District Magistrate to be inadequate having regard to the extent of the cash etc. handled by him and on being required he executed security bond dated 4-4-1950 for Rs.6000/- with plaintiffs as his sureties. Shri Siknis was bound to execute a bond for Rs.5000/- or such higher amount as may be deemed fit by the Collector and District Magistrate. The bond dated 4-4-1950 is perfectly legal, valid and operative and the liability of the plaintiffs thereunder is not discharged.

17. The recovery of the amount to the extent of Rs.6000/- as an arrear of land revenue is legal and proper in view of the security bond passed by the plaintiffs as sureties of Shri Siknis.

On these grounds among others it is submitted that the suit of the plaintiffs be dismissed with costs.

Assistant Government Pleader,
Bijapur.

I J.R.Desai (Assistant) Government Pleader, Bijapur, hereby declare that what is stated in paras 1 to 17 of this Written-statement is true on information received and believed to be true. Signed in Bijapur on day of 1953.

Assistant Government Pleader,
Bijapur.

19

IN THE COURT OF THE CIVIL JUDGE, SR.DN.,

AT BIJAPUR.

CIVIL SUIT NO. 41 of 1953.

1. M.P. Ankalikar.
2. S.S. Heralgi. .... Plaintiffs.

Vs.

1. The Bombay State .... Defendant.

Herein the defendant opposes the application for the plaintiffs Exh.6 on the following grounds:-

1. This defendant has put in his written-statement to the suit this day.

2. The plaintiffs are not entitled to any of the reliefs prayed for by them in the plaint.

3. The allegation in para 3 of Exh.6 is not correct There is no prima-facie case as alleged by the plaintiffs in Exh.6.

4. The proclaimation of sales and the sales are perfectly legal and valid. They would not amount to wrongful acts as alleged by plaintiffs in para 5 of Exh.6. ~~This~~ It is not necessary to have an Interim Injunction order.

5. The allegations in para 6 of Exh.6 and in para 7 of that Exh. are not correct.

6. The sale proceedings are being delayed by the plaintiffs and thereby the defendant is being put to a loss.

It is therefore, submitted that the Interim Injunction issued by this Court be ordered to be vacated. In the alternative it is prayed that at least security to the extent of Rs.6000/- may be ordered to be furnished by the plaintiffs.

(Assistant)Government Pleader,

Bijapur.

I, J.R.Desai (Assistant) Government Pleader, Bijapur, do hereby declare that what is stated in paras 1 to 6 above, is true according to the information received and believed to be true. This verification is made and signed at Bijapur on the day of 1953.

(Assistant) Government Pleader,
Bijapur.

No. 1541 of 1953. 21
3-12-1953.

To

The Remembrancer of Legal Affairs,
Secretariat, Bombay Castle, Bombay No.1.

Subject:- Bijapur Civil Suit No. 21 of 1953.

(1) ...A kalikar and another.
Vs.
(1) The State of Bombay

Sir,

I have the honour to state that the plaintiffs applied for an order directing the defendant to make discovery on oath of the documents in his possession or power relating to the matters referred to in the plaint (Please vide copy marked A). I opposed the application as per copy marked B. The Court passed an order which is copies by me below A.

2. The plaintiffs applied to the District Registrar for inspection and copy of the reply to them is sent herewith and is marked by me as (C). The plaintiffs then sent an application to the District Magistrate as per copy marked (D). This is not finally disposed of by the District Magistrate.

3. The plaintiffs again applied to the Court for an order for discovery as per copy marked (E)

I have prepared a draft of the objections and have sent the same herewith to you marked as (F).

29751
7/12/53
E

The plaintiffs' application refers to papers of Police investigation, and other inquiries and audits. It is vague and indefinite and relates to papers in various department.

I, therefore, request you to be pleased to scrutinise the objections and to favour me with a revised draft of the objections.

The date fixed for putting in objections is 4-1-1954.

Yours faithfully,

District Government Pleader, Bijapur.

A.

Regular Suit No. 41 of 1953. 23

CK13

In the Court of the Civil Judge, Sr.Dn. at Bijapur.

1. Madhav Pandurang Ankalikar,
Barister at law, and another ...plaintiffs.

Vs.

1. The State of Bombay. .... Defendant.

Application under Sec.11 Rule 12, C.P.C.

The pleader for the plaintiffs submit this application for an order directing the defendant to make discovery on oath of the documents which are or have been in its possession or power relating to the matters referred to on the plaint and in particular to the following matters.

1. The matters referred to in para 5(B1) of the plaint including the cash books of the godown for the years 50/51, 51/52, 52/53, cash books of the District Supply office, Bijapur, for the years 1950-51 and 51-52. Requisitions made by the godown manager for advances to the District Supply officer, Bijapur, during the period Dec.1949 to Nov.1952, Daily extracts and consolidated monthly cash accounts submitted to the District Supply office, Bijapur. Interim reports of the accounts supervisor and the Divisional Inspector of accounts, from September 1950 to November 1952.

(2). Matters referred to in the plaint para 5 (A 2) including order to the Mamlatdar of Bijapur to advance money to the godown manager, Bijapur, from the Collector's P.L.A. Advance and the requisition reports made by the go-down manager from time to time, from 27-8-1951 to 31-12-1951. Textile cash book of the Bijapur city godown.

3) Matters referred to in para 6(A) & (B 3) of the plaint including accounts Mannuals, parts B & C of the

Civil Supplies Department, Godown Keepers Hand Book and orders and circulars issued by Govt. from time to time for regulating the conduct of the godown staff in respect of cash and prescribing the duties of the supervising staff and the inspecting officers, including Divisional Inspector and the accounts Supervisor and other Auditors.

(4) Matters referred to in para 5(b 4), para 2 (sub-para) reports of the Dy.Director of Civil Supplies Department and other Special Auditor (Shri Markale) and Anti-corruption Police Inspector, Karnatak Branch, and also the reports that may be received by Govt such as of special Inquiry officers in respect of city godown defalcation matters.

5. And in general all such documents as directly or indirectly refer to the questions and matters involved in this suit.

Sd.G.T.Gokhale.

pleader for plff.

The Govt.pleader to take notice of this.

C.O.A.

10-8-1953. Sd.M.H.Kazi.
C.J.S.D.

Seen.
Sd.A.C.Angadi.
D.G.P.

The applicant to specify the documents which he considers them relevent and important at this stage.

22-9-1953. Sd. M.H.Kazi.

Civil Judge,Sr.Dn.

25

(B) Spl.Civil Suit No. 41 of 1953.

In the Court of the Civil Judge, Sr.Dn.Bijapur.

1. M.P.Ankalikar and another ... Plff.

Vs.

1. The State of Bombay. .... Deft.

Herein the District Government pleader for the defendant -the state of Bombay submits the following objections to plff's application of 10-8-1953(Ex.13).

1. The defendant opposes the plaintiff's application Ex.13.

2. The defendant has put in written-statment to the plff's suit on 14-8-1953. Now the suit stands adjourned. Thus the plaintiff's application is too premature and at this stage discovery on oath is not necessary.

3. The discovery sought for is not necessary either for disposing fairly off the suit or for saving the costs.

4. For the reasons stated above the plaintiff's application Ex.13 of 10-8-1953 may please be dismissed with costs.

Bijapur 20-8-1953.

Sd.A.C.Angadi.
Dist.Govt.Pleader,Bijapur.

(C) Letter.

No.SUP/ADM.SI-77/
Bijapur, 7-10-1953.

To

Shri M.P.Ankalikar,
Barrister, Bijapur.

Sir,

With reference to your application dated the 30th September, 1953, regarding the inspection of the records in connection with the defalcation at the Bijapur city godowns, I am to inform you that general inspection of Govt.records cannot, i is regretted, be permitted. However, inspection of such of the public documents as is permissible under sec.76 of the Indian Evidence Act will be allowed. You are, therefore, requested to furnish a kmst if dicynebts at tiy desure ti ubsoect si tgat your request may be considered on merits.

o.c. signed.
by the D.M.

Yours faithfully,

Sd. M.L.Vaikunthe,
For District Magistrate, Bijapur.

(D).

From

M.P.Ankalikar, Bar-at-law, Bijapur. 29

To

The District Magistrate, Bijapur.

Subject:- Application for Inspection of documents.

Reference:-Your letter No.S.U.P/4-D.M.SR-77 dated 7th October, 1953.

With reference to suit No.41/53 in the court of the civil Judge, Jr.Dn.Bijapur.

Dear sir,

I am obliged to you for your above letter and I give below the particulars of documents of which Inspection is sought.

(1) Account Manuals, Part-B and C of the Civil Supplies Department.

(2) Godown keepers' hand book.

(3) Orders-circulars and instructions issued by the Govt. and/or the Director ofCivil Supplies, Bombay and/or the District Magistrate, Bijapur, issued from time to time for regulating the conduct of the godown staff in respect of cash, stocks, etc. and prescribing the duty of the supervising staff and the Inspecting officers including the Divisional Inspectors the accounts Supervisors etc.

(4) Rules and regulations regulating the conduct of the Auditors and Accountants issued by the Govt or the Financial Adviser's office.

(5) Account Books including cash books of the District Supply Office, and of the Godowns, Bijapur, for the years 1950-51, 1951-52 and 1952-53.

(6) Accounts referring to the Textile Cash Book of the Bijapur City Godown during the said period.

(7) Daily account extracts and consolidated monthly cash accounts submitted to the District Supply officer, Bijapur, by the Godown Manager, Bijapur, during the said period.

(8) Requisitions made by the godown manager for cash to the District Magistrate, District Supply officer or the Mamlatdar, Bijapur, during the said period.

(9) Correspondence which resulted in issuing an order to the Mamlatdar, Bijapur, to advance money to the Godown Manager, Bijapur, from the Collector's P.L.A. account in 1951 (about August 1951).

(10) Rules, orders or circulars regulating the cash transactions of the city godown Managers in Bijapur and other districts.

(11) Reports made to the District Magistrate of the supply officer by the Inspecting staff and supervising staff and also auditors.

(12) Audit Notes issued by the Auditors in respect of the Bijapur City Godown during the said period.

(13) Complaint of Shri S.K.Shikhis, made to the Collector, Bijapur, on 4-11-1952 and correspondence that has taken place between the District Magistrate and the Govt or the Police in respect of the said complaint.

Thanking you.

Yours faithfully,

Sd. M.P.Ankalikar.
(M.P.Ankalikar).

Bijapur.
Dated 27-10-1953.

Suits :

Bijapur.

For a declaration that the plaintiffs' liability under the surety bonds executed by them for the due discharge of duties by Shri Shiknis, Godown Manager, Bijapur, is discharged ; etc.

37

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT

Resolution No. 18950/E.

Bombay Castle, 17th September 1953.

Letter from the Collector of Bijapur No. SUP/ADM. SR. 77, dated the 7th March 1953—Forwarding the papers in the suit noted in the margin ; and requesting sanction to its defence.

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION), BIJAPUR.

Civil Suit No. 41 of 1953.

1. Madhav Pandurang Auklikar ... ... } Plaintiffs ;
2. Sangappa Shankareppa Heralgi ... ... }

versus

The State of Bombay ... ... Defendant.

Memorandum to the District Government Pleader, Bijapur, No. 14184/E, dated the 2nd July 1953—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order and in the name of the Governor of Bombay,

J. R. DHURANDHAR,
Secretary to Government.

A Leg. H 189—1

[P.T.O.

To

The Civil Supplies Department,
The Collector of Bijapur,
The District Government Pleader, Bijapur (with two copies of the brief).

* With a copy of the brief.

No. of 1953.

Copy forwarded for information and guidance to

Subhedar after case
Tele no. Bijapur/53 (2nd)
1/4/54

33

BIJAPUR CIVIL SUIT No. 41 OF 1953.

Chronological Statement of Facts.

This is a suit filed by (1) Shri Madhav Pandurang Anklikar (plaintiff No. 1) and (2) Shri Sangappa Shankrappa Heralgi (plaintiff No. 2) against the State of Bombay (1) for a declaration that (*a*) the liability of the plaintiffs under the surety bonds dated the 6th January 1950 and 4th April 1950 executed by them is discharged, and (*b*) that the Revenue officers are not entitled to realise the amount of bonds by taking steps under the Bombay Land Revenue Code or otherwise against the property of the plaintiffs; (2) for permanent injunction restraining the defendant from realising the amount of the surety bonds; and (3) for costs.

2. On 15th December 1949 one Shri D. K. Shiknis was appointed as a Godown Manager, First Grade, at the Bijapur Godown under the District Supply Office, Bijapur. He served in that capacity till 4th November 1952. In accordance with the conditions of his service he has executed two security bonds in the form prescribed under rule 40(1) of the Financial Rules, one on 6th January 1950 for an amount of Rs. 2,000 before the Mamlatdar of Bijapur; and the other on 4th April 1950 for an amount of Rs. 6,000 before the District Supply Officer, Bijapur. In both these bonds he has offered Shri M. P. Anklikar (plaintiff No. 1) and Shri S. S. Heralgi (plaintiff No. 2) as sureties. These sureties accordingly signed the bonds.

3. On 4th November 1952 the Personal Assistant to the Collector of Bijapur paid a surprise visit to the Bijapur Godown for checking the cash balances at the godown. The cash box containing the cash balance on 3rd November 1952 duly sealed by the Godown Manager was brought from the Treasury Office in the presence of the Godown Manager and the District Supply Officer, Bijapur. It was found to contain Rs. 946-2-6. Another sum of Rs. 676 being the sale proceeds of grains and unspent balance remaining after the cash box was sent to the Treasury Office was produced by the Godown Manager. It was thereupon noticed that the Godown Manager had misappropriated a sum of Rs. 9,754-8-7 which was found short. A Panchnama was thereafter drawn of the cash balance found in the cash box and of the amount produced by the Godown Manager. His services were therefore terminated with effect from 4th November 1952 and he is now being prosecuted for misappropriation of Government money.

4. On 25th November 1952 the Divisional Inspector of Supply Accounts who held a detailed inquiry into the accounts of the Bijapur Godown also confirmed that the amount misappropriated by Shri Shiknis was Rs. 9,754-8-7.

5. On 9th December 1952 the District Magistrate, Bijapur, directed Shri Shiknis to make over the amount of Rs. 9,754-8-7 within 24 hours and further pointed out that on his failure to so pay, the amount would be recovered from him and his sureties as an arrear of land revenue. Instead of making the payment on 10th December 1952 Shri Shiknis tried to deny that

1950 and it was the duty of the defendant to bring it to the notice of the plaintiffs. All these allegations are false and should be denied specifically.

(a) The plaintiffs have tried to show that the District Supply Officer, Bijapur; and other Supply Officers by conniving at the defalcations and negligently omitting to exercise proper control have changed the conditions of service of the Godown Manager Shri Shiknis and it is possible that they might take up the contention that their liability is discharged under section 133 of the Indian Contract Act. Section 133 of the Act provides that any variation made without the consent of the surety in the terms of the contract between the principal debtor and creditor discharges the surety as to transactions subsequent to the variation. In the first instance it should be denied that the District Supply Officer or any other officers of the defendant either failed to exercise proper check on the accounts of the Bijapur Godown or that any of them connived at the defalcations. It should be stated that the Taluka Supply Aval Karkun, the Prant Officer, the District Supply Officer and the Supply Accountant had exercised proper check over the godown and its account as required by the Departmental Rules. All the specific allegations made in paragraph 5(b) of the plaint against the Supply Officer should be denied. It should be stated that the conditions of service of the said Shiknis were the same as those when the sureties executed the bonds and that no conditions of service of Shri Shiknis were changed. Section 133 has no application at all the present case. The allegation of fraud should be denied. In this connection plaintiffs are likely to contend that their liability is discharged under section 139 of the Indian Contract Act. Section 139 provides that : "If the creditor does any act which is inconsistent with the rights of the surety or omits to do any act which his duty to the surety requires him to do and the eventual remedy of the surety himself against the principal debtor is thereby impaired the surety is discharged." It should be stated that the defendant has done no act which is inconsistent with the rights of the plaintiff and that it has not omitted to do anything which has resulted in impairing the plaintiffs' remedy against Shri Shiknis. The plaintiffs have their remedies open against Shri Shiknis by way of reimbursement. This section has therefore hardly any application.

(b) It should be denied that the defalcations were going on in the accounts of the godown since 1950; or that the defendant has been aware of any such defalcations. In this connection the plaintiffs are likely to contend that the bonds were obtained by means of keeping silence as to the material circumstances and are therefore invalid, under section 143 of the Indian Contract Act. It should be denied that any material evidence was withheld by the defendant from the plaintiffs or that the defendant or its officers kept silent about anything in their knowledge. It should be stated that it was only on the surprise check on 4th November 1952 by the Personal Assistant to the Collector of Bijapur and on the detailed inquiry conducted by the Divisional Inspector of Supply Account, Dharwar Division, that the defendant first came to know that Government money have

been misappropriated by Shri Shiknis. There was therefore no duty cast upon the defendant of which it can be said to have failed. Therefore neither section 143 nor section 139 has any application to this case. It should be urged that liability of the plaintiffs is not discharged under any of the provisions of the Indian Contract Act and it still continues.

4. The next contention of the plaintiffs is that the bonds dated the 6th January 1950 and 4th April 1950 whereby the plaintiffs stood as sureties to Shri Shiknis do not create any right in favour of the defendant. This contention is not tenable and should be denied. It has been contended that on the execution of the second bond the first bond stands automatically cancelled. This contention is entirely wrong. Shri Shiknis was appointed to officiate as Godown Manager, First Grade, under the order of the then Commissioner, Southern Division, No. W.A.R. 38, dated 5th December 1949. As a Godown Manager of the First Grade it was a condition of his service that he should furnish a security to the extent of Rs. 5,000 with two sureties in the form mentioned in Rule 40(1) of the Financial Rules. The amount of Rs. 5,000 is not however the final limit and under G.R., F.D. (Supply), No. 725-Estt., dated 15th May 1945, Government has authorised the Collector in all cases to enhance these amounts and to fix adequate security as may be deemed fit having regard to the amount of cash or stores remaining in the charge or custody of the Godown Manager concerned. Shri Shiknis first executed a security bond on 6th January 1950 for Rs. 2,000 before the Mamlatdar of Bijapur and offered the plaintiffs as sureties for the amount. That amount was obviously considered as inadequate by the Collector of Bijapur and having regard to the cash handled by Shri Shiknis he was asked to furnish an additional security for an amount of Rs. 6,000. In view of the above orders of Government it was perfectly competent for the Collector to do so. Accordingly an additional bond has been executed by Shri Shiknis on 4th April 1950 wherein the plaintiffs have stood as sureties for that amount. The allegation that this bond is for Rs. 3,000 only is wrong and should be denied. The affidavit of the Supply Officer, Bijapur, dated 2nd February 1953, before the District Magistrate, Bijapur, makes the point quite clear. Both the bonds are intended to operate together simultaneously and do in fact do so. Besides the second bond does not in term cancel or revoke the earlier one. It is not therefore correct to say that the latter bond supercedes the earlier one by implication or that the first bond it is automatically cancelled on the execution of the second bond. It has been further contended that the second bond executed on 4th April 1950 is void for want of fresh consideration. It should be stated that the bond executed on 4th April 1950 is independent of the earlier bond and is covered by the second exception to section 25 of the Indian Contract Act. That provision excepts from the general principle enunciated in section 25 that an agreement without consideration is void if the agreement is a promise to compensate wholly or in part a person who has already voluntarily done something for the promisor or something which the promisor was legally compellable to do. The defendant having employed Shri Shiknis as a First Grade Godown Manager the said Shiknis according to the terms and

he had misappropriated the amount and further wrote to say that the question of paying it did not arise.

6. On 11th December 1952 therefore Shri M. P. Anklikar and Shri S. S. Heralgi who were sureties to Shri Shiknis were called upon by the District Magistrate to pay up the amount within 24 hours failing which, it was pointed out, that the amount would be recovered as an arrear of land revenue from them. They however failed to comply with the notice of demand and subsequently their properties were attached by the Mamlatdar of Bijapur and are being proceeded with for recovery of Rs. 6,000 as an arrear of land revenue.

7. On 8th December 1952 plaintiffs gave a notice of suit under section 80 of the Civil Procedure Code and on 11th February 1953 filed this suit in the Court of the Civil Judge, Senior Division, Bijapur, for the reliefs stated above.

8. The main contentions of the plaintiffs in this suit are :

(1) That until the investigation and inquiry into the deficit at the Bijapur Godown and the prosecution of Shri Shiknis are completed it would be difficult to hold Shri Shiknis or any other person responsible for the deficit;

(2) That the demand of Rs. 9,754-8-7 exceeded the limits of the liability undertaken by them;

(3) That their liability under the bonds is discharged under sections 133, 134, 139 and 143 of the Indian Contract Act on account of the fact that defendant's officers connived at and facilitated the defalcations by Shri Shiknis; and

(4) That the first bond dated 6th January 1950 automatically stood cancelled on the execution of the second bond on 4th April 1950; that the second bond is void for want of fresh consideration; and that neither of these bonds created any right in favour of the defendant.

Grounds of Defence.

The first contention of the plaintiffs is that since neither the investigation and inquiry into the Bijapur Godown accounts are complete; nor has the prosecution against the Godown Manager Shri Shiknis been concluded, the liability for the defalcated amount cannot be fixed either on the said Shiknis or any other person. This contention is wrong and should be denied. As a Godown Manager of the Bijapur godown, the responsibility for the custody of the godown, the stocks of grains stored therein, and for all cash and for proper accounts was entirely on the said Shiknis. He is liable to account for all cash and other property which may have come into his possession or control by reason of his having been appointed to that office. The cash balances at the godown were checked by the Personal Assistant to the Collector of Bijapur on 4th November 1952 and an amount of Rs. 9,754-8-7 was found to be short. He is therefore primarily liable to account for the loss. The Divisional Inspector, Supply Accounts, Dharwar Division, who was requested to make

detailed inquiry into the accounts of the period during 1st April 1952 to 3rd November 1952 has furnished his report on 25th November 1952. It is clear from this report that Shri Shiknis has misappropriated an amount of Rs. 9,754-8-7. There is therefore no substance in the contention that an inquiry into the accounts of the godown has not been made or completed. It is true that Government deputed the Divisional Inspector of Supply Accounts, Poona Division, to make a special audit of the accounts of the godown. That audit however does not affect in any way the detailed inquiry already made by Divisional Inspector of Supply Accounts, Dharwar Division. The audit is for a different purpose. It should be stated that this inquiry which was made by a competent authority proved that the defalcations were made by Shri Shiknis and that it was not necessary to await the result of any further audit or of the prosecution launched against Shri Shiknis. It should therefore be urged that the demand for the repayment of the defalcated amount from Shri Shiknis and the plaintiffs was quite legal and proper.

2. The second contention of the plaintiffs is that the demand made by the Prant Officer calling upon each of them to pay Rs. 9,755-0-3 exceeds the limits of the liability undertaken by them. This contention is baseless and should be denied. There are no papers to show that the Prant Officer demanded the amount misappropriated by Shri Shiknis from the plaintiffs on 4th November 1952. However, the position appears quite clear that this alleged demand cannot affect the liability of the plaintiff for the amount of the bonds. Under the security bonds furnished by Shri Shiknis on 6th January 1950 and 4th April 1950 plaintiffs have stood sureties for a total amount of Rs. 8,000 (Rs. 2,000 + Rs. 6,000) and bound themselves jointly and severally to forfeit to the Governor of Bombay the said sum or such lesser sum as shall be deemed sufficient by the Collector to cover any loss or damage which the Governor of Bombay may sustain by reason of default of Shri Shiknis. On the failure of Shri Shiknis to deliver up the amount of Rs. 9,754-8-7 the District Magistrate, Bijapur, on 11th December 1952 called upon the plaintiffs to pay the amount of Rs. 8,000 only, and not the whole of the amount misappropriated by Shri Shiknis. Besides recovery proceedings against the immoveable properties of the plaintiffs are being taken only for an amount of Rs. 6,000. The plaintiffs should therefore have no grievance on this point.

3. The next contention of the plaintiffs is that their liability under the bonds is discharged under sections 133, 134, 139 and 143 of the Indian Contract Act under the circumstances mentioned in paragraph 5(*a*) to (*d*) of the plaint. This contention is not tenable and should be denied. Shorn of all irrelevancies and repetitions the plaintiffs' allegations in this behalf come to this :

(1) that the contract underlying the bond envisages that the officers of Government would exercise proper check and control over the Bijapur godown accounts and that failure to do so and connivance of the District Supply Officer, Bijapur, had affected their rights and is a fraud on them ; and

(2) that the defendant had notice that defalcations were going on in the Bijapur godown accounts since

33

BIJAPUR CIVIL SUIT No. 41 OF 1953.

Chronological Statement of Facts.

This is a suit filed by (1) Shri Madhav Pandurang Anklikar (plaintiff No. 1) and (2) Shri Sangappa Shankrappa Heralgi (plaintiff No. 2) against the State of Bombay (1) for a declaration that (*a*) the liability of the plaintiffs under the surety bonds dated the 6th January 1950 and 4th April 1950 executed by them is discharged, and (*b*) that the Revenue officers are not entitled to realise the amount of bonds by taking steps under the Bombay Land Revenue Code or otherwise against the property of the plaintiffs; (2) for permanent injunction restraining the defendant from realising the amount of the surety bonds; and (3) for costs.

2. On 15th December 1949 one Shri D. K. Shiknis was appointed as a Godown Manager, First Grade, at the Bijapur Godown under the District Supply Office, Bijapur. He served in that capacity till 4th November 1952. In accordance with the conditions of his service he has executed two security bonds in the form prescribed under rule 40(1) of the Financial Rules, one on 6th January 1950 for an amount of Rs. 2,000 before the Mamlatdar of Bijapur; and the other on 4th April 1950 for an amount of Rs. 6,000 before the District Supply Officer, Bijapur. In both these bonds he has offered Shri M. P. Anklikar (plaintiff No. 1) and Shri S. S. Heralgi (plaintiff No. 2) as sureties. These sureties accordingly signed the bonds.

3. On 4th November 1952 the Personal Assistant to the Collector of Bijapur paid a surprise visit to the Bijapur Godown for checking the cash balances at the godown. The cash box containing the cash balance on 3rd November 1952 duly sealed by the Godown Manager was brought from the Treasury Office in the presence of the Godown Manager and the District Supply Officer, Bijapur. It was found to contain Rs. 946-2-6. Another sum of Rs. 676 being the sale proceeds of grains and unspent balance remaining after the cash box was sent to the Treasury Office was produced by the Godown Manager. It was thereupon noticed that the Godown Manager had misappropriated a sum of Rs. 9,754-8-7 which was found short. A Panchnama was thereafter drawn of the cash balance found in the cash box and of the amount produced by the Godown Manager. His services were therefore terminated with effect from 4th November 1952 and he is now being prosecuted for misappropriation of Government money.

4. On 25th November 1952 the Divisional Inspector of Supply Accounts who held a detailed inquiry into the accounts of the Bijapur Godown also confirmed that the amount misappropriated by Shri Shiknis was Rs. 9,754-8-7.

5. On 9th December 1952 the District Magistrate, Bijapur, directed Shri Shiknis to make over the amount of Rs. 9,754-8-7 within 24 hours and further pointed out that on his failure to so pay, the amount would be recovered from him and his sureties as an arrear of land revenue. Instead of making the payment on 10th December 1952 Shri Shiknis tried to deny that

No. 1083 of 1956
Office of D.G.P.Bijapur.
9th August 1956.

To

The Remembrancer of Legal Affairs,
Sachivalaya, Bombay.

Subject: Bijapur Civil Suit No.41/53

1. M.P.Ankalikar & another. Plff
Vs.
1. The State of Bombay.. Deft

Sir,

I have sent herewith a copy of an application for amendment put in by plaintiffs in the above suit. A draft of the objections prepared by me is also sent herewith for favour of your approval. The objections to be put in as revised and approved of by you may please be sent to me.

2. Shri D.K.Shiknis was Godown Manager in Bijapur. He misappropriated large sums of money. Thus his sureties the plaintiffs were proceeded against for the recovery of the amount to the extent of the amount for which they stood surety by passing security bonds. The plaintiffs who are sureties have filed the above suit and contend by their allegations in the plaint that their liability as sureties is discharged as the defalcation has been made possible and facilitated by the conduct and illegal and irregular acts both of omission and commission on the part of superior officers.

The Godown Manager (Shri D.K.Shiknis) and his direct Superior the Supply Officer (Shri A.R.Kale) were both proceeded against, the former for dishonest misappropriation of the amount and the latter for allowing abetment there-of. They were convicted by Special Judge Bijapur, the former under S.5(2), and the latter under S.5(2) and S.5(2) of the Prevention of Corruption Act read with S.109 of the Indian Penal Code.

I have sent herewith a copy of the judgment of the Special Judge in this respect.

3. The Godown Manager has preferred an appeal to the High Court. The Supply Officer has also preferred an

an appeal to the High Court. Both the appeals are pending in the High Court.

4. It is very easy (for the prosecution and) for the State of Bombay to show in this suit even that the Godown Manager (for whom these plaintiffs are sureties) did in fact misappropriate the amounts.

As regards the Supply Officer the case for the prosecution in the abovesaid Criminal case was that he dishonestly allowed and abetted the misappropriation thereof. This case was upheld by the Special Judge, Bijapur and thus the Supply Officer Shri A.E.Kale was convicted. Appeal preferred by him is still pending in the High Court Whether in the appeal the case of the prosecution that Shr Kale dishonestly allowed and abetted the misappropriation by the Godown Manager(Shri D.K.Siknis) as has been upheld by the Special Judge would be upheld by the High Court is still to be seen.

5. I have submitted the above facts to you as, Yesterday, the plaintiff No.1 Shri M.P.Ankalikar who is B.A., LL.B., and Bar-at-Law submitted to Court that he and his co-plaintiff are prepared to accept the findings of the Special Judge (to the effect that the Godown Manager for whom they are sureties did misappropriate the amount and that the Supply officer (his immediate superior Shri Kale who also is convicted as stated above) allowed and abetted the same. He further submitted that on this basis he would argue that his (and co-plaintiff's) liability as sureties stands discharged.

In view of the fact that Shri Kale has preferred an appeal I submitted to Court that I would take instructions and then submit my say.

6. The case of the prosecution in the criminal case, as in this suit, ~~is~~ was that the Godown Manager Shri Siknis dishonestly misappropriated the amount. Thus the sureties(~~also~~ who are the plaintiffs in this suit). ~~are~~ are

are proceeded against. The case of the plaintiffs in this suit is that the defalcation has been made possible and facilitated by the superior officers. This has also been the case of the prosecution in the case decided by the Special Judge.But ~~his~~ the appeal ~~by~~ is still pending in the High Court. The plaintiffs now want to stick up to the finding of the court of Special Judge and contend that their liability is discharged.

7. The findings of the learned Special Judge in paras 184 and 188 and 189 of the judgment may in particular be noticed.

8. In view of this I pray for instructions as to whether I may state to the Court as follows :-

(A) The Godown Manager (for whom the plaintiffs are sureties) dishonestly misappropriated Rs.9754-8-7. The District Supply Officer (Shri A.R.Kale) dishonestly allowed and abetted the misappropriation by the Godown Manager. The findings of the learned Special Judge in judgment in Criminal Case No.3 of 1955(including ~~of~~ his findings in para 184 of the judgment) should be adopted by the Civil Court by the common consent of the parties in this suit.

(B) On the basis of these findings the Court may proceed to consider the other points in the suit (which mainly will be as to whether the plaintiffs are discharged from their liability).

Yours faithfully,

Dist.Govt.Pleader,
Bijapur.

Submitted
Mr D.G.P., Bijapur may
be requested to oppose the applica-
tion for amendment and file the
draft of the objections sent by him
16/8 - Sulpis

with respect to para 1 of the D.G.'s letter he may be informed that his draft reply to the Hqrs' amendment appln is approved.

With respect to para 8 of this letter he may be informed as follows:—

"Para 184 of the special judge's judgment in Criminal case contains ~~final observations~~ comments ~~finding~~ on the conduct and acts of not only the two officers who were the accused in that case but of several other officers. All the comments in that para cannot be treated as finding relevant for the purpose of the present civil suit.

The Govt moneys. The Govt manager (Shiteris) misappropriated the Supply Officer (Kale) abetted him in doing so & the misappropriation committed by the Govt manager was facilitated by negligence, or want of supervision or other wrongful acts on the part of other officers Govt cannot be responsible for their illegal omissions and wrongful acts which Govt had neither authorised nor ratified"

18-8-

Regular Suit No.41 of 1953.

In the Court of the Civil Judge,Sr.Dn.,

At Bijapur.

1. Madhav Pandurang Ankalikar
2. Sangappa Shankarappa Heralagi... Plffs.

Vs.

1. State of Bombay.

The plaintiffs beg to submit this application for amendment of the plaint,as since filing of the suit the plaintiffs have come to know certain things, particularly during the trial of the Godown Manager and the District Supply Officer, in the case filed by the Government against them , in Spl.Criminal Case No. 3 of 1955, in the Court of the Special Judge, at Bijapur, and it is necessary to make some additions in the plaint for the purpose of determining the real questions involved in the suit.

It is submitted that anew clause No.(5) be added after clause No.4 of Paragraph 5(b) of the plaint(at page 4), after the words " the faked verification of the audits" at the end of the said clause and before the beginning of the para with the ~~xx~~ words " there are some of the instances. etc. as under :-

"(5) The misappropriation in the Godown cash started on 11-9-1950. On or about 11-9-1950 the then Supply Officer, in collusion with the then Supply Accountant and other Officers, issued a cheque on the Bijapur Government. Treasury for Rs.5000/- in favour of D.K.Shiknis, the then Godown Manager and the said Supply Officer prevailed upon the said Godown Manager to purchase a draft of Rs.4500/- out of the amount of the said cheque from a local Bank and the Supply Officer, utilised the same for the purphase of his private motor-car. Subsequently,during the course of two years,at the instigation of the Supply Officer,major part of the defalcated amounts ~~xxx~~ went to the personal benefit of the Supply Officer. The Supply Officer was not only aware of the misappropriation from its initial state, but is found to have illegally permitted

and abetted the same.

Bijapur.

7-8-1956 Plaintiffs.

I, Madhav Pandurang Ankalikar, plaintiff, do hereby verify that the contents of the above application are true to my knowledge, and belief on information received

Dated: 7-8-1956. and signed at Bijapur.

Plaintiff No.1

Civil Suit No.41 of 1953.

In the Court of the Civil Judge,Sr.Dn.,
Bijapur.

1. M.P.Ankalikar and another.. Plffs.

Vs.

1. The State of Bombay... Deft.

Herein the defendant opposes the plaintiff's application dated 7-8-1956(and presented in Court on 8-8-1956) for amendment of the plaint on the following grounds:-

1. The application for amendment ismade at a very late stage.
2. The suit was filed on 11-2-1953 and the application for amendment is made about 30 months thereafter.

On these grounds, it is submitted that the application for amendment be dismissed with costs.

If however the Court allows the amendment,it is, prayed that the Court may be pleased to grant time for putting in additional written statement.

Dist.Govt.Pleader,
Bijapur.

IMMEDIATE. No. 18831/E

Office of the
Remembrancer of Legal Affairs,
Sachivalaya, Bombay, 23-/August '56.

Subject:- Bijapur Civil Suit No. 41 of 53.
M.P. Ankalikar & another.
Vs.
The State of Bombay.

MEMORANDUM.

With reference to his letter No. 1083 dated the 9th August 1956 on the above subject, the District Government Pleader, Bijapur is informed that his draft reply to the plaintiff's amendment application is approved.

As regards para 8 of his letter he is informed as under; -

" Para 184 of the Special Judge's judgment in the Criminal Case contains comments on the conduct and acts of not only the two officers who were the accused in that case but of several other officers. All the comments in that para connot be treated as findings relevant for the purpose of the present Civil Suit.

The Godown Manager (Shiknis) misappropriated the Government Moneys. The supply Officer (Kale) abetted him in doing so. If the misappropriation committed by the Godown Manager, was facilitated by negligence, want of supervision or other wrongful acts on the part of other officers, Government cannot be responsible for their illegal omissions and wrongful acts which Government had neither authorised nor ratified

The copy of judgment in Special Criminal Case No. 3 of 1955 is returned herewith.

Issued PSO 23/8

Submitted for signature of 20/8. Sd/-

23-8

For Remembrancer of Legal Affairs.

To

The District Government Pleader,
Bijapur.

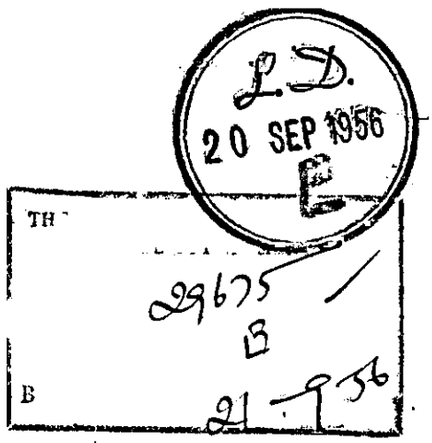
Fde in S. Bij. 10/53

24/6

J.S.

S. Bij. 10/53
25-6-53

No. 1313 of 1956.
Office of D.G.P.Bijapur.
18-9-1956.



To

The Remembrancer of Legal Affairs,

Sachivalaya, Bombay.

Subject:- Bijapur Civil Suit No. 41 of 1953.

Sir,

With reference to your Memorandum No. 18831/E of 23-8-1956, I have the honour to state that I put in in Court objections as approved of by you in respect of plaintiff's application for amendment. To-day, the Court allowed the amendment. The suit is now fixed for putting in additional written-statement in respect of the matter introduced by ~~his~~ the amendment.

2. The copy of the application sent to you under my No. 1083 of 9-8-1956 contains the amendment. I have prepared a draft of additional written statement in this respect and have sent it herewith for your approval.

3. The draft of the written-statement sent herewith is in accordance with the charge and the final order of conviction of the Godown Manager Shri Shiknis and the District Supply Officer Shri Kale in Special Criminal Case No.3 of 1955 on the file of the Court of Special Judge, Bijapur. The two accused who were convicted by that Court have preferred appeals to the High Court and they are still pending.

The date fixed for putting in additional Written Statement is 1-10-1956.

Yours faithfully,

Ahmadabad

District Government Pleader,
Bijapur.

Immediate Submitted for perusal

Submitted draft additional W.S. 22/9

c/o cases to be in order

If necessary they may however be returned to Shri Kapileshwari as there is Civil Suit No. malla

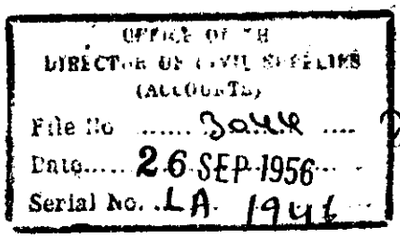
Shri Chitre (MJ) 22-9

Sd (MJ) 25/9

Sd (MJ) draft may be returned to Shri Kapileshwari for records. 25-9

M. R to Dy. D C S(L) No^x 21854/E

dt. 26-9-56



mlt*D
Sales M
S. Bij 10/53

27/9

By D.C.S (L)

(In draft supplies by written
statement is examined. Para 2 of
reference may be amended as
indicated at (1) & (2) in the
margin. The rest is in
order

31587
E
28.9.56

Secn
27/9/56

D.O.R to L.D (Notification M.L.,
1946

D.R. 10-7-dt 27-9-56

In the Court of the Civil Judge, Sr.Dn.Bijapur.

Civil Suit No. 41 of 1953.

1. M.P.Anklikar and another ... Plffs.

Vs.

1. The State of Bombay. .... Deft.

Herein the Additional Written-Statement of the defendant is as follows:-

Shri D.K.Shiknis - the Godown Manager - for whom the plaintiffs were sureties was noticed to have misappropriated Rs 9754-8-7 as stated in Para 5 of the Written Statement. He was prosecuted along with the District Supply Officer Shri A.E.Kale and the charge framed against them in Criminal Case No. 3/55 was that between 30-11-1951 and 4-11-1952 Shri Sikhnis being godown manager and as such a public servant dishonestly or fraudulently misappropriated a sum of Rs 9754-8-7 out of the amount entrusted to him or under his control as a public servant and that between the aforesaid dates Shri Kale being the District Supply Officer and as such a public servant dishonestly or fraudulently allowed Shri Sikhnis to dishonestly or fraudulently misappropriate the aforesaid sum out of the amount entrusted to him or under his control as a public servant and abetted him to so misappropriate the said amount during the aforesaid period etc. The Special Judge convicted Shri Sikhnis and Shri Kale in respect of offences of which they stood charged.

(2) The facts are as stated in Para 1 above and the allegations of the plaint in the amended portion of the plaint are not accurate and therefore are not admitted. The allegations in this para against the supply assistant & other officers are denied.

(1)

(2)

District Government Pleader,
Bijapur.

P.T.O.

I, A.C.Angadi, District Government Pleader,Bijapur, do hereby declare that what is stated above is true on information received and believed to be ~~km~~ ~~kg~~ true.

Signed at Bijapur on

District Government Pleader,
Bijapur.

Exh Delivery

52.

No. 222-52e/E
Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1) 29—9—1953

Subject: Civil Suit No: 41 of 1953

Memorandum

With reference to his letter No. 1313 dated the 18th Sept. 1953 forwarding a draft written ~~statement~~ in the suit noted above for approval, the District Government Pleader, Bijapur is informed that two copies of the revised ~~approved~~ draft are forwarded herewith

Pl. issue
29/9

29—9

for Remembrancer of Legal Affairs.

To

The District Government Pleader, Bijapur

Issued
as D
29/9

Subject to review of D.D.C.S.(L) 2nd
dt 29/9 Suit No 41 of 53, This may issue

Submitted after issue

File on S. Vijapur 10/53

11/10/51

In the Court ofthe Civil Judge, Sr.Dn., Bijapur.

Civil Suit No. 41 of 1953.

M.P. Anklikar & Anr.. .. Piffs;
vs.
The State of Bombay.. .. Deft.

Herein the Additional Written Statement of the defendant is as follows:-

1. Shri D.K. Shiknis, the Godown Manager for whom the plaintiffs were sureties was noticed to have mis-appropriated Rs. 9754-8-7 as stated in Para 5 of the Written Statement. He was prosecuted along with the District Supply Officer Shri A.C. Kale and the charge framed against them in Criminal Case No. 3/55 was that between 30-11-1951 and 4-11-1952 Shri Sikhnis being godown manager and as such a public servant dishonestly or fraudulently misappropriated a sum of Rs. 9754-8-7 out of the amount entrusted to him or under his control as a public servant and that between the aforesaid dates Shri Kale being the District Supply Officer and as such a public servant dishonestly or fraudulently allowed Shri Sikhnis to dishonestly or fraudulently misappropriate the aforesaid sum out of the amount entrusted to him or under his control as a public servant and abetted him to so misappropriate the said amount during the aforesaid period etc. The Special Judge convicted Shri Sikhnis and Shri Kale in respect of offences of which they stood charged.

2. The facts are as stated in para 1 above and the (1) allegations of the plaintiff in the amended portion of the plaint are not accurate and therefore are not admitted, (2) The allegations and insinuations against the supply accountant and other officers are denied.

District Government Pleador,
Bijapur

p.t.o.

7/

I A.C. Angadi, District Government Pleader, Bijapur, do hereby declare that what is stated above is true on information received and believed to be true. Signed at Bijapur on

District Government Pleader,
Bijapur.

hsp/29/9

C.U. 10/3
4-10-56